

## § 202.7

and is published in the FEDERAL REGISTER.

(Sec. 19(a), 48 Stat. 908; sec. 23(a), 48 Stat. 901; sec. 20(a), 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; sec. 211(a), 54 Stat. 855; (15 U.S.C. 77s(a), 78w(a), 78t(a), 77sss(a), 80a–37(a), 80b–11(a))

[25 FR 6736, July 15, 1960, as amended at 44 FR 35208, June 19, 1979]

### § 202.7 Submittals.

(a) All required statements, reports, applications, etc. must be filed with the principal office of the Commission unless otherwise specified in the Commission's rules, schedules and forms. Reports by exchange members, brokers and dealers required by § 240.17a–5 of this chapter under the Securities Exchange Act of 1934 must be filed with the appropriate regional office as provided in § 230.255(a) of this chapter under the Securities Act of 1933, and with the principal office of the Commission and the appropriate regional office as provided under § 240.17a–5(a) *et seq.* of this chapter under the Securities Exchange Act of 1934.

(b) *Electronic filings.* All documents required to be filed in electronic format with the Commission pursuant to the federal securities laws or the rules and regulations thereunder shall be filed at the principal office in Washington, DC via EDGAR by delivery to the Commission of a magnetic tape or diskette, or by direct transmission.

[41 FR 44699, Oct. 12, 1976, as amended at 58 FR 14659, Mar. 18, 1993; 59 FR 5945, Feb. 9, 1994; 73 FR 32227, June 5, 2008]

### § 202.8 Small entity compliance guides.

The following small entity compliance guides are available to the public from the Commission's Publications Room and regional offices:

(a) *Q & A: Small Business and the SEC.*<sup>1</sup>

(b) *The Work of the SEC.*<sup>1</sup>

(c) *Broker-Dealer Registration Package.*

(d) *Investment Adviser Registration Package.*

(e) *Investment Company Registration Package.*

<sup>1</sup>These items are also available on the Securities and Exchange Commission Web site on the Internet, <http://www.sec.gov>.

## 17 CFR Ch. II (4–1–09 Edition)

(f) *Examination Information for Broker-Dealers, Transfer Agents, Investment Advisers and Investment Companies.*

[62 FR 4105, Jan. 28, 1997]

### § 202.9 Small entity enforcement penalty reduction policy.

The Commission's policy with respect to whether to reduce or assess civil money penalties against a small entity is:

(a) The Commission will consider on a case-by-case basis whether to reduce or not assess civil money penalties against a small entity. In determining whether to reduce or not assess penalties against a specific small entity, the following considerations will apply:

(1) Except as provided in paragraph (a)(3) of this section, penalty reduction will not be available for any small entity if:

(i) The small entity was subject previously to an enforcement action;

(ii) Any of the small entity's violations involved willful or criminal conduct; or

(iii) The small entity did not make a good faith effort to comply with the law.

(2) In considering whether the Commission will reduce or refrain from assessing a civil money penalty, the Commission may consider:

(i) The egregiousness of the violations;

(ii) The isolated or repeated nature of the violations;

(iii) The violator's state of mind when committing the violations;

(iv) The violator's history (if any) of legal or regulatory violations;

(v) The extent to which the violator cooperated during the investigation;

(vi) Whether the violator has engaged in subsequent remedial efforts to mitigate the effects of the violation and to prevent future violations;

(vii) The degree to which a penalty will deter the violator or others from committing future violations; and

(viii) Any other relevant fact.

(3) The Commission also may consider whether to reduce or not assess a civil money penalty against a small entity, including a small entity otherwise excluded from this policy under paragraphs (a)(1) (i)–(iii) of this section, if the small entity can demonstrate to

## Securities and Exchange Commission

## § 202.10

the Commission's satisfaction that it is financially unable to pay the penalty, immediately or over a reasonable period of time, in whole or in part.

(4) For purposes of this policy, an entity qualifies as "small" if it is a small business or small organization as defined by Commission rules adopted for the purpose of compliance with the Regulatory Flexibility Act.<sup>1</sup> An entity not included in these definitions will be considered "small" for purposes of this policy if it meets the total asset amount that applies to issuers as set forth in §230.157a of this chapter.<sup>2</sup>

(b) This policy does not create a right or remedy for any person. This policy shall not apply to any remedy that may be sought by the Commission other than civil money penalties, whether or not such other remedy may be characterized as penal or remedial.

[62 FR 16079, Apr. 4, 1997]

### **§ 202.10 Policy statement of the Securities and Exchange Commission concerning subpoenas to members of the news media.**

Freedom of the press is of vital importance to the mission of the Securities and Exchange Commission. Effec-

tive journalism complements the Commission's efforts to ensure that investors receive the full and fair disclosure that the law requires, and that they deserve. Diligent reporting is an essential means of bringing securities law violations to light and ultimately helps to deter illegal conduct. In this *Policy Statement the Commission sets forth guidelines for the agency's professional staff* to ensure that vigorous enforcement of the federal securities laws is conducted completely consistently with the principles of the First Amendment's guarantee of freedom of the press, and specifically to avoid the issuance of subpoenas to members of the media that might impair the news gathering and reporting functions. These guidelines shall be adhered to by all members of the staff in all cases:

(a) In determining whether to issue a subpoena to a member of the news media, the approach in every case must be to strike the proper balance between the public's interest in the free dissemination of ideas and information and the public's interest in effective enforcement of the federal securities laws.

(b) When the staff investigating a matter determines that a member of the news media may have information relevant to the investigation, the staff should:

(1) Determine whether the information might be obtainable from alternative non-media sources.

(2) Make all reasonable efforts to obtain that information from those alternative sources. Whether all reasonable efforts have been made will depend on the particular circumstances of the investigation, including whether there is an immediate need to preserve assets or protect investors from an ongoing fraud.

(3) Determine whether the information is essential to successful completion of the investigation.

(c) If the information cannot reasonably be obtained from alternative sources and the information is essential to the investigation, then the staff, after seeking approval from the responsible Regional Director, District Administrator, or Associate Director, should contact legal counsel for the member of the news media. Staff

<sup>1</sup>Pursuant to the Reg. Flex. Act, 5 U.S.C. §601(3), the Commission has adopted appropriate definitions of "small business" for purposes of the Reg. Flex. Act. See 17 CFR 270.0-10, 275.0-7, 240.0-10, 230.157, 250.110, and 260.0-7. The Commission recently proposed amendments to certain of these definitions. *Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933*, Securities Act Rel. No. 7383, 62 FR 4106 (Jan. 28, 1997). The Commission extended the comment period for the proposed amendments to April 30, 1997, 62 FR 13356 (Mar. 20, 1997). Based on an analysis of the language and legislative history of the Reg. Flex. Act, Congress does not appear to have intended that Act to apply to natural persons (as opposed to individual proprietorships) or to foreign entities. The Commission understands that staff at the Small Business Administration have taken the same position.

<sup>2</sup>At present, this threshold is \$5 million. Thus, non-regulated entities, such as general partnerships, privately held corporations or professional service organizations, with assets of \$5 million or less may qualify for penalty-reduction.